

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: CLARY, Michael

Application No. 09/765,098

Group Art Unit: 8219

Filed: 18 January 2001

Examiner: Vu, Stephen A.

For: ARTICULATING CHAIR

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February 24, 2003

APPEAL BRIEF

Hon. Commissioner of Patents
and Trademarks
Washington, D.C. 20231

Sir:

This is an Appeal from the final rejection of Claim 1 of the subject application, the only claim in this case. No claims stand allowed.

STATUS OF CLAIMS

Claim 1 is pending in the application. The rejection of claim 1 is appealed. Please see Appendix A for a copy of the claim under Appeal.

STATUS OF AMENDMENT

Per Advisory Action dated 31 January 2003, the amendment filed subsequent to final rejection is entered for purposes of this Appeal.

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SUMMARY OF INVENTION

The present invention is a folding leisure chair that incorporates a knockdown four-piece tubular frame. A removable fabric cover is applied to the frame, and the cover supports a cushion that is swingable relative to the frame. The chair may be used in two different positions on the floor, one in which the cover functions as a backrest and the cushion as a seat, and the other in which the cover presents a reclining surface and the cushion provides a headrest to one reclining on the surface. The frame is further constructed of a pair of long U-shaped frame portions and a pair of short L-shaped connectors adapted for a telescopic fit in the ends of the U-shaped frame portions. The present invention as reflected in claim 1 is a combination of features for making the collapsable frame more durable and easy to assemble and use. Specifically, the features include 1) a fully removable cover; 2) zinc plating on the tubular frame; and 3) the ends of the tubes are chamfered.

The Zinc plating is an excellent lubricant both for the telescoping tubes and for the fabric cover. Thus, the Zinc plating eases assembly of the frame components as well as installation of the cover. The chamfered metal ends help in exactly the same regard, and the combination of these two features eases assembly of the unit, prevents tearing of the fabric during insertion and/or use, and greatly increases the expected lifetime of the assembled unit.

The above constitutes a concise explanation of the invention defined in claim 1 involved in the Appeal.

SUMMARY OF PROSECUTION HISTORY

The application was filed on 18 January 2001. A first Official Action was mailed on 13 February 2002, and applicant timely responded with amendments. A second and final Official Action was mailed on 22 July 2002. Applicant initiated a telephone interview with the Examiner on December 9, 2002, and soon after responded with an Amendment filed under 37 C.F.R. 1.116 on 23 December 2002 (together with Notice of Appeal). Per Advisory Action dated 31 January 2003, the amendment filed subsequent to final rejection is entered for purposes of this Appeal.

RELATED APPEAL PROCEEDINGS

None

REAL PARTY IN INTEREST

The real party in interest is BJ Industries, Inc., 11100 Gilroy Road, Hunt Valley, MD 21030.

ISSUES

There is one issue set forth as follows:

1st: Whether the subject matter of the present claims is unpatentable under U.S.C. 103(a) over the cited combination?

GROUPING OF CLAIMS

As noted above, there is only one remaining claim which has been rejected in view of the grounds for rejection which the appellant contests. The appellant hereby states that the rejected claim stands and falls together.

APPELLANTS' ARGUMENT

1. The subject matter of the present claims is not obvious under U.S.C. 103(a) over the cited combination.
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As stated above, the folding leisure chair of the present invention incorporates a knockdown four-piece tubular frame, a removable fabric cover applied to the frame, and a cushion that is swingable relative to the frame. The chair may be used in two different positions on the floor, one in which the cover functions as a backrest and the cushion as a seat, and the other in which the cover presents a reclining surface and the cushion provides a headrest to one reclining on the surface. The frame is further constructed of a pair of long U-shaped frame portions and a pair of short L-shaped connectors adapted for a telescopic fit in the ends of the U-shaped frame portions. In this very limited context, claim 1 further recites two features that make the device easier to assembly and longer lasting. These features are as follows: 1) zinc plating on the tubular frame; and 2) the ends of the tubes are chamfered.

The Zinc plating is an excellent lubricant both for the telescoping tubes and for the fabric cover. Thus, the Zinc plating eases assembly of the frame components as well as installation of

the cover. FIG. 8 of the present specification illustrates a Zinc-plated and chamfered end of an exemplary frame member 5 in accordance with the present invention. The chamfering is best accomplished by grinding the rim around its periphery. The chamfered ends of the U-shaped frame portions 5 and 7 greatly facilitates mating of the tubes, insertion of the cover 2, and it reduces the risk of tearing of the fabric cover 2. Thus, the combined features help to ease assembly of the unit and greatly increases the expected lifetime of the assembled unit.

The Examiner rejects claim 1 under 35 U.S.C. § 103 as being obvious over U.S. Patent No. 4,410,214 to Geschwender in combination with the Zavaglia '894 reference. According to the Examiner, Geschwender '214 shows an articulating chair (1) comprising a knockdown frame having a pair of separate U-shaped frame portions (5,7). Geschwender '214 does not teach or suggest chamfered ends or Zinc plating. Likewise, the Zavaglia '894 reference does not teach or suggest chamfered ends or Zinc plating. Nevertheless, the Examiner takes official notice that these are obvious improvements. They are not obvious improvements because one skilled in the art would not readily appreciate the lubricant value of the Zinc plate relative to the fabric cover, or the combined ability of the Zinc plate and chamfered tubes to prevent tearing and increase longevity. The Examiner has not met his *prima facie* case of obviousness on either of these two elements.

Moreover, it is well settled that an inventive combination cannot be anticipated by finding individual features separately in the prior art and combining them in a piecemeal manner to show obviousness. See, In re Kamm and Young, 17 USPQ 298, *affd.* (Court held that "The rejection

here runs afoul of a basic mandate inherent in section 103 - that a piecemeal reconstruction of the prior art patents in the light of appellants disclosure shall not be the basis for a holding of obviousness. See, also, In re Rothermel, 47 CCPA 866, 870, 276 F.2d 393, 396, 125 USPQ 328, 331 (1960). In Schnell et al v. The Allbright-Nell Co. et al, 146 USPQ 322. "Improvement over prior art, even though it be simple or involves only a reversing of certain parts, is patentable unless prior art shows that improvement is obvious."

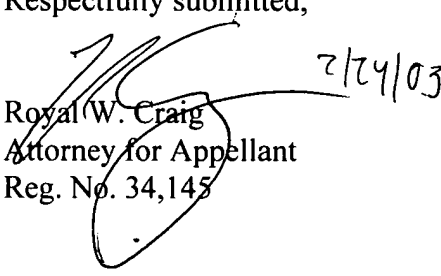
In light of the foregoing, claim 1 is patentably distinguished on the basis of the recited Zinc-plate and chamfered tubes, all in the context of the particular folding two-way easy chair of the present invention.

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For the reasons set forth herein, it is believed that this application clearly and patentably distinguishes over the prior art and is in proper condition for allowance.

Reversal is respectfully requested.

Respectfully submitted,


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APPENDIX A: Claim Under Appeal

1. An articulating chair, comprising:

a knockdown frame including a pair of separate generally U-shaped frame portions, one constituting a seat frame portion and the other constituting a backrest frame portion, each of said U-shaped frame portions having two chamfered ends, and a pair of generally L-shaped connectors adapted for a telescopic fit over the chamfered ends of said frame portions to form a rigid generally L-shaped frame, and all of said U-shaped frame portions and L-shaped connectors being Zinc plated for ease of assembly;

a removable cover formed to fit over the frame and to hold said knockdown frame in assembly, said cover including a top panel section sewn against a bottom panel section, a side panel section sewn there between, and a cushion enclosed there between, said cover being insertable over said frame and swingable relative to the frame;

whereby said chair may be assembled and positioned on a surface in one of a first position in which the seat portion of the frame rests flat with the backrest portion extending upward to provide a backrest, said cushion extending forwardly from the frame to provide a seat, and a second position said chair being adapted to be overturned from said first position to a second position in which the seat portion of the frame extends upwardly and the backrest portion slopes downwardly with the cushion resting thereon to present a reclining surface.